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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Implementation of Section 309(j)
of the Communications Act -
Competitive Bidding

PP Docket No. 93-253

To: The Commission

PETITION FOR RECONSIDERATION

Pacific Telecom Cellular, Inc. ("PTC"), by its attorneys and pursuant to Section 1.429 of the Federal Communications Commission's rules and regulations, 47 C.F.R. § 1.429, submits its Petition for Reconsideration of the Fifth Report and Order (hereafter "Fifth Order")^{1/} and the Order on Reconsideration^{2/} in the above-captioned proceeding. In those decisions the Commission adopted, and on its own motion reconsidered, rules for auctioning of licenses for broadband personal communications services ("PCS").

PTC and its affiliates are prospective investors in applicants for PCS licenses and are directly affected by the Commission's actions in this matter.^{3/}

I. The Current Eligibility Rules For The Entrepreneurs' Blocks Prejudice Designated Entities And Willing Investors Who Desire To Participate In The PCS Business

1. When Congress enacted legislation authorizing the use of

^{1/} 59 Fed. Reg. 37566 (July 22, 1994).

^{2/} Order on Reconsideration, FCC 94-217, released August 15, 1994.

^{3/} PTC is controlled by Pacific Telecom, Inc., a Washington corporation and telecommunications holding company.

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auctions as a means of licensing spectrum, it clearly and specifically required the Commission to promulgate rules that would ensure that small businesses, rural telephone companies, minorities and women (collectively the "DEs") were not disadvantaged by virtue of their small size or limited capital assets, but instead were assured of an opportunity to obtain PCS licenses. In that section of the law directing the FCC to establish auction procedures, Congress stated:

In prescribing regulations pursuant to paragraph (3), the Commission shall --

. . . (D) ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services, and, for such purposes, consider the use of tax certificates, bidding preferences, and other procedures

47 U.S.C. § 309(j)(4).

The Commission's auction rules for broadband PCS fall short of that Congressional mandate. In the process of defining eligibility of applicants for the "Entrepreneurs' Blocks" ^{4/}, the Commission unnecessarily and arbitrarily limited the ownership and voting rights of non-controlling investors. The effect is to constrain the ability of DEs to compete for licenses and establish telecommunications businesses that are competitive in the market place.

^{4/} Frequency Blocks C and F are set aside for those applicants which meet the eligibility standards prescribed by the Commission. See Section 24.709 of FCC Rules, 47 C.F.R. Sec. 24.709.

2. The Commission sought to carry out its mandate respecting participation of DEs in PCS by setting aside the Entrepreneurs' Blocks of frequencies. The Commission recognized as did Congress that DEs face a competitive disadvantage against larger, more capital affluent entities. In order to be eligible to participate in bidding for Entrepreneurs' Blocks, the Commission decided in the Fifth Order that an applicant must meet a \$125 million gross revenue threshold and have less than \$500 million in assets. (By comparison, small businesses are defined as entities with less than \$40 million gross revenue.) The eligibility rules for the Entrepreneurs' Blocks also include so-called "control group" standards under which no individual or principal investor in the applicant may have \$100 million or more in personal net worth. (Order at para. 156) However, the gross revenue, assets or personal net worth of an investor in the applicant will not be considered if the investor holds less than 25 percent of the applicant's passive equity. (para. 158)^{5/} The passive investor in a corporation is defined as one holding no more than 15 percent of the voting interest. ^{6/}

3. The Commission adopted limits on the participation of investors as part of a plan to foster DE participation in broadband PCS. The effect of such limits, however, is counterproductive to

^{5/} For applicants controlled by women and minority group members there is a different standard that allows investors to hold up to 49.9 percent of the applicant's passive equity. Section 24.709(b)(4)(ii)

^{6/} The Order on Reconsideration raised the voting threshold from 5% to 15% for investors in corporate Entrepreneurs' Block applicants.

the purpose. As noted in paragraph 6, infra, an entity with DE status will need substantial capital resources not only to bid for licenses in the Entrepreneurs' Blocks, but also to compete with some of the largest corporations in the country, such as the Regional Bell Operating Companies, who will acquire PCS licenses in the same market areas.

4. In its Fifth Order, the Commission succinctly stated the problem for DEs:

The inability of small businesses and businesses owned by women and minorities to obtain adequate private financing creates a serious imbalance between these companies and large businesses in their prospects for competing successfully in broadband PCS auctions.

Fifth Report and Order at para. 118. With the problem identified, PTC submits that a somewhat different approach to the involvement of investors would allow DEs to attract more capital and better achieve the desired result.

II. The FCC Should Allow Investors To Have More Ownership And Voting Rights When Joining With Entrepreneurs' Block Eligibles

5. In order to afford DEs a meaningful opportunity to attract investors, and thus permit them to succeed not only in auctions but in the market place, the Commission should allow investment in qualified Entrepreneurs' Block applicants of up to 49.9% equity, and allow commensurate voting rights. This proposal affords all DEs the same ability to obtain capital as is available to applicants for the other broadband PCS licenses.

6. The importance of capital availability at the post-auction construction and operating stages cannot be overstated. PCS systems

will be costly to deploy, considering the need for more cells than are required for cellular systems to cover an area of comparable size. Once constructed, the service must be marketed in a manner which is competitive with entrenched cellular operators and other PCS licensees with vast capital resources. If Entrepreneurs' Block licensees are hamstrung in attracting capable investors, their success in obtaining licenses could well be the only success they achieve in the process. Capital starved entrepreneurs will be driven out of the market by their better financed competitors. While such a result was not intended by Congress or the Commission, the rules in their current form contribute to instead of solving the problem. A change in the rules can assist entrepreneurs with capital formation and still ensure that DEs retain control of the PCS license.^{2/}

7. In the Order on Reconsideration issued in this proceeding just a few days ago, the Commission, on its own motion, decided not to attribute revenues, assets and net worth of investors in corporate applicants unless the investor owns more than 15% of the corporation's voting stock (up from 5%). Commenting on the importance of investment to smaller entities seeking to participate in broadband PCS, the Commission stated, "...we recognized that passive investment in entrepreneurs' block applicants would be

^{2/} The Commission typically defines control as more than a 50% interest. As an example, the FCC's generic auction rules provide: "An applicant is presumed to have control or have the power to control a concern if he or she owns or controls or has the power to control 50 percent or more of its voting stock." § 1.2110(b)(4)(i)

critical to the successful development of these smaller companies." Order on Reconsideration, PP Docket No. 93-253 at para. 8 (rel. Aug. 15, 1994). In the Commission's discussion of its decision to increase permissible voting rights of investors in all corporate applicants, the Commission underscored the dilemma for small businesses that are seeking investors for PCS: "[i]nvestors that are prepared to devote considerable funds to an entrepreneurs' block applicant should reasonably expect to exercise some ability to protect their investment through a modest level of voting stock ownership." Order on Reconsideration, at para. 10

8. It is apparent that the Commission has an appreciation of the needs of investors to participate in voting to protect their investments. Investors have reasonable concerns about a new technology that has not proven its marketplace appeal. However, PTC submits that, even with most recent rule change, there is still inadequate protection for investors. PTC encourages the Commission to revisit the issue of ownership and voting rights of investors, and allow full participation up to the 49.9% level for both ownership and voting in applicants for the Entrepreneurs' Blocks. Moreover, the Commission need not and should not deny voting rights in cases where investors are limited partners, up to the 49.9 percent level, in applicants for the Entrepreneurs' Blocks. Such changes will better promote the goal of meaningful participation by DE-controlled entities in broadband PCS.

III. CONCLUSION

9. The current limitations on investor participation serve to

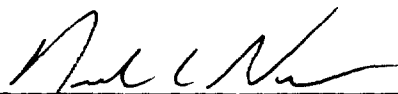
undermine the purpose of the Entrepreneurs' Blocks. Under the current auction rules, DEs will be constrained unnecessarily in their ability to attract investors. To compete effectively, DEs need investors with substantial capital resources that can be used to meet the substantial costs of construction and operation of PCS systems.

10. Section 24.709(b)(4) of the Commission's rules should be modified to allow, without financial limitations, investor participation up to the 49.9% ownership level (except as general partners) in applicants for the Entrepreneurs' Blocks. The same rule should also allow full voting rights, up to the 49.9% level, for those investors. Such rule changes will minimize the legitimate concerns of investors in new telecommunications businesses and promote meaningful opportunities for DEs to compete in the PCS market place.

Respectfully submitted

PACIFIC TELECOM CELLULAR, INC.

By:



David L. Nace
Marci E. Greenstein

Its Attorneys

Lukas, McGowan, Nace
& Gutierrez, Chartered
1111 Nineteenth Street, N.W., Suite 1200
Washington, D.C. 20036
(202) 857-3500

August 22, 1994

CERTIFICATE OF SERVICE

I, Katherine A. Baer, a secretary in the law offices of Lukas, McGowan, Nace & Gutierrez, Chartered, do hereby certify that I have on this 22nd day of August, 1994, had copies of the foregoing PETITION FOR RECONSIDERATION hand-delivered to the following:

Chairman Reed E. Hundt
Federal Communications Commission
1919 M Street, N. W.
Room 814
Washington, D. C. 20554

Commissioner James H. Quello
Federal Communications Commission
1919 M Street, N. W.
Room 802
Washington, D. C. 20554

Commissioner Andrew C. Barrett
Federal Communications Commission
1919 M Street, N. W.
Room 826
Washington, D. C. 20554

Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N. W.
Room 832
Washington, D. C. 20554

Commissioner Raychelle Chong
Federal Communications Commission
1919 M Street, N. W.
Room 844
Washington, D. C. 20554



Katherine A. Baer